

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Robert Fletcher Herbert,)	C/A No. 3:13-262-JFA-PJG
)	
Plaintiff,)	
)	
vs.)	ORDER
)	
Benjamin F. Treaster, and Daryl Scott Barber,)	
)	
Defendants.)	
)	

The *pro se* plaintiff, Robert Fletcher Herbert, is an inmate at the Perry Correctional Institution. He brings this action under 42 U.S.C. § 1983 contending that the defendants violated his constitutional rights during plaintiff's arrest.

The Magistrate Judge assigned to this action¹ has prepared a Report and Recommendation and opines that the defendants' motion for summary judgment² should be granted. The Report sets forth in detail the relevant facts and standards of law on this matter, and the court incorporates such without a recitation.

¹ The Magistrate Judge's review is made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objection is made, and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b)(1).

² An order was issued pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975) notifying plaintiff of the summary dismissal procedure and possible consequences if he failed to adequately respond to the motion for summary judgment. Plaintiff responded to the motion.

The plaintiff was advised of his right to file objections to the Report and Recommendation, and he has filed objections thereto. The court has conducted a *de novo* review of the plaintiff's objections and finds them to be duplicative of the claims in the complaint. As such, the plaintiff's objections are overruled.

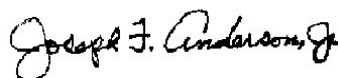
The Magistrate Judge opines that the defendants are immune from suit in their official capacities pursuant to the Eleventh Amendment of the United States Constitution. The Magistrate Judge also suggests that the plaintiff's claims against defendant Barber in his supervisory position over defendant Treaster cannot be supported under the doctrine of respondeat superior in a § 1983 action. Finally, the Magistrate Judge finds that defendant Treaster did not personally participate in any alleged deprivation of the plaintiff's constitutional claims such that plaintiff could show a valid § 1983 claim.

After carefully reviewing the applicable laws, the record in this case, the Report and Recommendation, and the plaintiff's objections thereto, this court finds that the Magistrate Judge's recommendation fairly and accurately summarizes the facts and applies the correct principles of law. The Report is therefore adopted and incorporated herein by reference.

Accordingly, the defendants' motion for summary judgment (ECF No. 41) is granted and this action is dismissed. Plaintiff's motions for appointment of counsel, to file a cross motion for summary judgment, and to amend his complaint are denied.

IT IS SO ORDERED.

March 18, 2014
Columbia, South Carolina



Joseph F. Anderson, Jr.
United States District Judge